IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 30249 of 2006(A)

PETITIONER:

RAJAMMA, W/O.LATE KUNJACHAN VIJAYAN,
KOYIKKAL PARAMBU, KANJIRAMCHIRA WARD, ALAPPUZHA.

BY ADV. SRI.K.K.SATHEESH
SRI.SIBI KARUN

RESPONDENT:

UNION OF INDIA,
REPRESENTED BY THE UNDER SECRETARY, MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION,
LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI-110 003.

BY ADV. SRI.K.P.MUJEEB, ADDL.CGSC
BY GOVERNMENT SRI. V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.30249/2006 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER DTD. 20/10/47 PASSED BY THE SPECIAL MAGISTRATE COURT, ALLEPPEY IN CASE NO.P.E.9/1122 ME.**

EXT.P2: **COPY OF THE ORDER NO.R.DIS.34231/71 DTD. 29/06/1972 OF THE DISTRICT COLLECTOR, ALAPPUZHA.**

EXT.P3: **COPY OF APPLICATION SUBMITTED BY THE PETITIONER FOR SSS PENSION DTD. 26/03/1998.**

EXT.P4: **COPY OF THE PKC ISSUED BY SRI. V.S.ACHUTHANANDAN MLA DTD. 30/95/1973.**

EXT.P5: **COPY OF THE REPRESENTATION DTD. 4/01/2005 SUBMITTED BY THE PETITIONER TO THE DISTRICT COLLECTOR, ALAPPUZHA.**

EXT.P6: **COPY OF THE NARC FROM THE SUPDT. OF SPECIAL SUB JAIL, ALAPPUZHA DTD. 21/12/2004.**

EXT.P7: **COPY OF THE NARC FROM THE SUPDT. OF SPECIAL SUB JAIL, ALAPPUZHA DTD. 27/11/2004.**

EXT.P8: **COPY OF THE CO-PRISONER CERTIFICATE ISSUED BY SRI.H.K.CHKRAPANI DTD. 15/11/04.**

EXT.P9: **COPY OF THE AFFIDAVIT DULY ATTESTED BY THE CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA DTD. 29/01/1999 SUBMITTED BY THE PETITIONER.**

EXT.P10: **COPY OF THE JUDGMENT DTD. 10/07/2006 OF THIS HON'BLE COURT IN WP(C) NO.4437/2005.**

EXT..P11: **COPY OF THE COMMUNICATION NO.52/CC/K/33/2005-FF (SZ) DTD. 4/10/2006 ISSUED BY THE RESPONDENT TO THE PETITIONER.**

EXT.P12: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DTD. 12/10/2006.**

/TRUE COPY/

P.S.TO JUDGE

KSS

T.R. Ramachandran Nair, J.

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W.P.(C).NO.30249 of 2006-A

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Dated this the 20th day of August, 2007

JUDGMENT

The petitioner is the widow of late Shri Kunjachan Vijayan who was a freedom fighter and had actively participated in the Punnapra – Vayalar Movement during the freedom struggle. The claim is based on the under trial imprisonment for two different periods, i.e, 12 months from November 1946 to October 1947 in the defunct Sub jail at Alappuzha as an accused in case No.P.E.7/1122 ME and from November 1947 to May 1949 in the Central Prison, Trivandrum in connection with case No.P.E.9/1122 ME. The petitioner was the 81st accused in case No.P.E.9/1122 ME. This is supported by the committal order, Ext.P1 dated 20.10.1947 in P.E.No.9/1122 ME (Crime No.48/1122 ME of Alappuzha Police Station) passed by the Court of Special Magistrate, Alleppey. He is arrayed as 81st accused in Ext.P1 also.

2. The petitioner's late husband was the holder of 'Thamrapathra' and he was also granted the Kerala Freedom Fighters' Pension as per Ext.P2 order dated 29.6.1972. After his death on 10.10.1993, the petitioner is getting the dependent family pension under the said scheme.

3. Ext.P3 is the application for grant of pension under the SSS Pension Scheme submitted by the petitioner on 26.3.1998. She had produced along with Ext.P3, the Personal Knowledge Certificate issued by Shri V.S. Achuthanandan, Hon'ble Chief Minister who was a Member of the Legislative Assembly at that time (Ext.P4). In Ext.P4 it has been clearly certified that the petitioner's late husband had participated in the freedom struggle in connection with Punnapra – Vayalar in 1946 and had undergone imprisonment in the sub jail at Alappuzha for 12 months and further 18 months in the Central Jail, Trivandrum as accused in Case NO.P.E.9/1122. Exts.P6 and P7 are the non-availability of records certificate produced by the petitioner along with Ext.P5 representation to the District Collector, Alappuzha. They were issued by the Superintendent, Central Jail, Trivandrum and Superintendent, Special Sub Jail, Alappuzha respectively. Ext.P8 is the co-prisoner's certificate issued by Shri H.K. Chakrapani who was granted Central pension and had suffered imprisonment for a period of more than five years. He had clearly certified that the petitioner's late husband was tried by the Special Magistrate Court, Alappuzha in case No.P.E.9/1122 ME and was lodged in the same jail along with him during the period from November 1948 to May 1949. The petitioner had approached this court earlier by filing Writ Petition No.4437/2005. This

court after noticing the submission of the learned Govt. Pleader that the State Government had recommended her eligibility for pension as per letter dated 12.8.2005, directed the first respondent to consider and pass orders on the application for pension as recommended and forwarded by the State Government. It is thereafter that Ext.P11 has been issued rejecting the petitioner's claim.

4. The main reason for rejecting the claim is that acceptable primary evidence has not been produced, that valid NARC has not been produced and in the absence of valid NARC, co-prisoner's certificate cannot be considered as not acceptable. It is also stated that the certificates issued by Shri V.S.Achuthanandan and Shri H.K. Chakrapani are not acceptable, as the certifiers themselves had not undergone prescribed minimum one year jail suffering. The last reason stated is that the recommendation by the State Government is not binding on the Central Government.

5. Learned counsel for the petitioner submitted that it is evident from Ext.P1 that he was 81st accused in case No.P.E.9/1122 ME and therefore the primary evidence to show that he was an accused in the case is available. It is also pointed out that going by the certificates of Shri V.S. Achuthanandan and Shri H.K. Chakrapani, the period of imprisonment of the petitioner stands proved and NARC produced as Exts.P6 and P7 are liable to be acted

upon in the light of the specific recommendation by the State Government. Learned counsel for the petitioner relied upon the decisions of this court in O.P. Nos.7749/2000 and 9558/1999 to contend for the position that once the State Government has recommended the grant of pension, a further NARC by the State Government is not required. It is therefore submitted that as the primary evidence to show that he was an accused, was available in the form of Ext.P1, the other materials produced by them are sufficient in accordance with the provisions of the Scheme and therefore the view taken in Ext.P11 is unsustainable.

6. I find force in the above submissions of the learned counsel for the petitioner. As regards the validity of the NARC, it is clear that Exts.P6 and P7 states about the non-availability of records in the respective jails. In O.P.No.7749/2000, in similar circumstances, it is held as follows:

> "After recommendation from State Government, it cannot be rejected mainly on the ground that NARC was not given by the State Government. The proof required to be given etc. are explained b the Supreme Court in Mukund Lal Bhandari and others v. Union of India and others (AIR 1993 SC 2127). The SSS pension scheme itself also intends to help them who have given their best part of their lives for the country and in view of Exts.P1, P6 and P7, there is no justice for denial of pension in this case."

This court was pleased to direct the Central Government to grant pension. In the judgment in O.P.No.9558/1999 also it was held that as the State

Government has satisfied, it has forwarded the application and that itself shows that the State Government has accepted the contentions of the petitioner and no further certificate is necessary. There also, the Union Government was directed to grant SSS pension to the petitioner as per law.

6. Judged in the light of the above decisions of this court, I find that the view taken in Ext.P11 that the NARC produced are not valid, is not correct. The primary evidence in the form of Ext.P1 is available and coupled with the same, Exts.P6 and P7 certificates are also available. It is undisputed that the State Government has recommended the grant of SSS pension. Therefore, the claim cannot be rejected for want of a valid NARC. The NARCs. produced are clearly acceptable. The reason that primary evidence in support of the claim of imprisonment is not available, is also not correct in the light of Ext.P1 which evidences the fact that he was 81st accused in that case. His period of imprisonment is supported by the co-prisoner's certificate issued by Shri V.S. Achuthanandan, Hon'ble Chief Minister and also that of Shri H.K. Chakrapani. The petitioner has produced along with Ext.P12, copy of the true extract of the convict register in respect of the certifier Shri H.K.Chakrapani.

For all the above reasons, I find that Ext.P11 is liable to be quashed and I do so. It is declared that the petitioner is eligible for grant of pension

under the SSS Pension Scheme. Consequential orders granting the same with arrears from the date of receipt of the application (date of application being 26.3.1996) shall be issued within a period of six weeks from the date of receipt of a copy of this judgment.

The Original Petition is allowed as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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